

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 August 2004

CASE NO.: 2004 SOX 53

In the Matter of

BARBARA L. STAPLETON
Complainant

v.

GOVERNMENT TELECOMMUNICATIONS, INC.
Respondent

and

APPLIED DIGITAL SOLUTIONS, INC.
Respondent

Appearances: Mr. John P. McGeehan, Attorney
For the Complainant

Ms. Elizabeth L. Lewis, Attorney
Mr. Scott A. Johnson, Attorney
For the Respondents

Before: Richard T. Stansell-Gamm
Administrative Law Judge

**INITIAL DECISION AND ORDER
APPROVAL OF MOTION TO WITHDRAW COMPLAINT**

Pursuant to a Notice of Hearing, dated May 24, 2004, and a continuance order, dated June 18, 2004, I set a hearing date of August 17, 2004 for this case in Washington, D.C. On July 27, 2004, in response to the Respondent's Motion to Dismiss Ms. Stapleton's whistleblower complaint, I issued a preliminary initial decision and order: a) dismissing as untimely a portion of Ms. Stapleton's complaint relating to Respondent's termination of her employment; and, b) denying Respondent's request for attorney fees. On August 4, 2004, Complainant's counsel submitted a motion to withdraw Ms. Stapleton's complaint. In light of that motion, I continued the scheduled hearing. On August 10, 2004, I received a response to the withdrawal motion from Respondent's counsel.

According to her counsel, at this time, Ms. Stapleton believes withdrawal of the complaint is in her best interest because the expenses and intangible costs associated with

continued litigation outweigh the potential relief and benefit of a successful prosecution. Through counsel, Respondent does not object to a withdrawal or dismissal of the complaint with prejudice.

Twenty C.F.R. § 1980.111 (c) provides that at any time prior to the findings or order becoming final, a party may withdraw her objections to the findings or order by filing a written withdrawal request with the administrative law judge. Upon submission, the administrative law judge determines whether the withdrawal will be approved.

Ms. Stapleton's case was forwarded to me based on her timely objection to the Regional Administrator's May 4, 2004 determination that her whistleblower complaint was untimely and thus essentially dismissed. Due to this procedural history, Ms. Stapleton's Motion to Withdraw Complaint represents a motion to withdraw her objection to the Regional Administrator's effective dismissal of her complaint.

As mentioned above, on July 27, 2004, I issued a preliminary initial order dismissing the portion of Ms. Stapleton's complaint concerning the Respondent's termination of her employment. Since Ms. Stapleton did not file a timely petition for review of the preliminary initial order, that determination is final and she may not now withdraw her objection to the timeliness determination concerning her complaint of retaliatory employment discharge. The only portion of Ms. Stapleton's whistleblower complaint that was timely and remains viable relates to her allegation of post-employment retaliation in the form of interference with her reemployment efforts.

Since no determination or order has become final concerning her complaint of continuing post-employment retaliation, the regulation permits Ms. Stapleton to withdraw the remaining, unresolved portion of her complaint. Accordingly, I approve the withdrawal of Ms. Stapleton's complaint and her corresponding objection to the Regional Administrator's effective dismissal of her whistleblower complaint. My approval of the withdrawal motion terminates all proceedings before the Office of Administrative Law Judges.

ORDER

The Complainant's Motion to Withdraw her complaint is **APPROVED**. All proceedings before the Office of Administrative Law Judges are terminated.

SO ORDERED:

A
RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: August 10, 2004
Washington, D.C.

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110, unless a petition for review is timely filed with the

Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b), as found OSHA, Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; Interim Rule, 68 Fed. Reg. 31860 (May 29, 2003).